**Attachment -Additional Questions for the Record**

**Chairman Latta**

*I understand that the Affordable Connectivity Program (ACP) will soon run out of money, but I am concerned about the size of the program and that it is not appropriately targeted.*

*1. What reforms would you recommend making to ACP?*

**RESPONSE:** The Affordable Connectivity Program (ACP) is the largest—and most successful—broadband affordability program in our Nation's history. At present, more than 22 million households across urban, rural and suburban America rely on the ACP to obtain internet services they need in order to fully participate in civic and economic modern life. It is critical that Congress provide additional funding for this essential program. If ACP support is allowed to expire this year, millions of households could be shut off from the internet service they have come to rely on for school, work, health care and more.

The Commission implemented and administers the ACP consistent with the language in the Bipartisan Infrastructure Law. The Bipartisan Infrastructure Law establishes the key requirements of the ACP, including the eligibility criteria, benefit level, eligible services and devices, and eligible providers. While the Commission continues to evaluate the program and is committed to making program changes within its authority that will protect the success and integrity of the ACP, the agency does not have authority to change the statutory requirements from Congress for the program.

Nonetheless, in order to help sustain the program, we would be happy to discuss changes that Congress may wish to make to the ACP's statutory requirements. To further strengthen program integrity, Congress could consider reforming the system for alternative verification of applicants, in order to ensure all beneficiaries use the broader system for national verification. To further target the program on strictly connectivity, Congress could consider changing the device subsidy in the Bipartisan Infrastructure Law.

*2. Do you believe the current device subsidy is still necessary?*

**RESPONSE:** The Bipartisan Infrastructure Law establishes the device subsidy for the ACP. Under the law, providers have the option, but are not required, to offer discounted connected devices through the ACP. The law further specifies that this one-time discount is limited to up to $100 to purchase a laptop, desktop computer or tablet if the consumer contributes more than $10 and less than $50 toward the purchase price. This subsidy, which was designed during the height of the pandemic, assists participating households with obtaining the connected devices they may need in order to use the discounted internet service they receive through the ACP. Based on provider reported data, 246 ACP providers offer discounted connected devices through the program. To date, over 9 million connected devices have been funded through the ACP.

Without an act of Congress, the Commission cannot eliminate the device subsidy. Nonetheless, in order to sustain the ACP in a post-pandemic environment and focus the program more broadly

on connectivity, Congress may wish to cut this subsidy. The Commission would be happy to discuss such changes and provide technical assistance on this matter.

*3. Fixed wireless broadband connectivity is a promising option for many Americans that still sit on the wrong side of the digital divide. I understand fixed wireless broadband is being considered as part of the ongoing lower 12 GHz (12.2-12.7) proceeding. Could you provide an update on the Commission's work to modernize rules for the lower 12 GHz band along with a timeline on when the Commission might make a decision?*

**RESPONSE:** The Commission has identified more than 1000 megahertz of prime mid-band spectrum in the 12 GHz Band (12.2-13.25 GHz) for new and innovative uses. These are airwaves are right in the middle of the 7-16 GHz band that we have identified as the sweet spot for the next generation of wireless technology—or 6G. We are the first country in the world to identify these bands for new wireless use and take action.

I believe these airwaves can be optimized with a mix of licensed, unlicensed, and space-based services. The 12.7-13.25 GHz band is a prime candidate for mobile use, so we are exploring how to put it in the wireless broadband pipeline, which is critical for United States wireless leadership.

Last year, we took action to ensure the present and future of satellite services in the 12.2-12.7 GHz band. But we also realize there may be additional potential in these airwaves, so we are exploring ways to enable new uses of this mid-band spectrum, potentially including wireless broadband or expanded backhaul to support advanced broadband, while protecting incumbent satellite functions that millions of people in this country rely on every day.

Since the record in the proceeding closed, Commission staff has been carefully reviewing stakeholder submissions—including technical feasibility studies and suggested coordination mechanisms—with an eye to opening up this band for new services while protecting important satellite services. We aim to conclude our review of these submissions in the coming months and determine whether information before us supports the feasibility for new or expanded services to co-exist with incumbent services in the band.

**<u>The Honorable Tim Walberg</u>**

*In 2007 and 2011, the FCC issued two orders, known as Time Warner and CRC Communications, confirming the rights of telecommunications carriers under federal law to interconnect with incumbent local telephone companies to provide wholesale interconnection services to voice over IP providers and other communications companies in light of the requirement in Section 251(a) of the Communications Act for "each telecommunications carrier .. to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." The decisions concluded that "telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services," that affirming these interconnection rights would "advance the Commission's goals in promoting*

*facilities-based competition as well as broadband deployment," and that "such wholesale competition and its facilitation of the introduction of new technology holds particular promise for consumers in rural areas." These decisions have been critical to the development of voice over IP as a competitor to landline voice service, particularly in rural areas where voice competition is limited.*

*In July of 2022, Midcontinent Communications filed a petition asking the FCC to affirm the Time Warner and CRC Communications decisions and to apply them to prevent state regulators from evading the clear mandate to permit interconnection and competition by imposing unnecessary requirements for additional state authority on carriers that wish to provide federally-mandated interconnection services. The FCC's delay in granting this petition, and in reaffirming its prior decisions as well as the plain language of the Communications Act, has unfortunately created great uncertainty, as well as disincentives for deployment of both competitive voice and broadband services in rural communities. Given the importance of bringing advanced services to rural communities, and that, as you noted in your 2022 year-end review, competition is the most effective way to lower costs for consumers, particularly in rural areas, prompt action in this proceeding is important.*

*1. In light of these considerations, how does the FCC plan to address the petition and when will this decision be made?*

**RESPONSE:** In March 2022, the South Dakota Public Utilities Commission (PUC) issued an order concluding that the services Midcontinent seeks to provide are local exchange services, as defined under South Dakota law, and that Midcontinent must therefore obtain a certificate of authority to provide the services in the service area. In July 2022, the South Dakota PUC approved an interconnection agreement which included Midcontinent, but conditioned its effectiveness on Midcontinent obtaining a certificate of authority. However, Midcontinent did not attempt to obtain a certificate of authority from the South Dakota PUC and instead filed a petition later that month at the Commission requesting that the agency's Wireline Competition Bureau issue a declaratory ruling affirming that a telecommunications carrier authorized to provide any telecommunications service in a state may seek interconnection with any other telecommunications carrier under section 251(a) of the Act for the purpose of providing exclusively wholesale interconnection services for the exchange of local traffic, without needing to obtain additional authority—such as a certificate of authority to provide local exchange service—from a state regulator. Midcontinent asserts that the Commission's Time Warner and CRC decisions, which you reference, prohibit a state regulator from imposing additional requirements as a condition of obtaining approval for wholesale interconnection. Opponents of Midcontinent's petition claim that these decisions do not prohibit states from requiring certifications and therefore Midcontinent's petition is tantamount to a request for the Commission to preempt state certification procedures.

The Wireline Competition Bureau sought comment on the petition on July 20, 2022. The Bureau is currently reviewing the record in response to the petition and continues to engage with interested stakeholders, including the South Dakota Public Utilities Commission, through *ex parte* filings and meetings. In determining next steps, the Commission is considering the complex questions the record raises regarding the relationship between telecommunications

companies' rights under federal law to engage in interconnection and the important role that state regulatory agencies play to ensure that the telecommunications companies have the necessary qualifications and capabilities to provide customers with service.

**The Honorable Earl L. "Buddy" Carter**

*1. Commissioner Rosenworcel, I would like your thoughts on the FNPRN for the lower 12 GHz band and the potential to expand terrestrial fixed broadband across this 500-megahertz swath of mid-band spectrum. As you know, too many Americans remain digitally unconnected. Many of my constituents still sit on the wrong side of that divide. If the Commission finds coexistence is possible between existing satellite communications systems and more robust use of the existing terrestrial licenses through high-powered two-way fixed broadband service, we owe it to all Americans to move quickly to finalize new rules that will foster greater competition and connect more Americans. I understand the record and technical data provided to the Commission demonstrate the Commission could maximize these benefits by crafting new, modern rules for the lower 12 GHz band. What is your current view on the status of the lower 12 GHz band proceeding and how quickly might you make a decision so stakeholders can prepare to connect even more of my constituents in Georgia?*

**RESPONSE:** The Commission has identified more than 1000 megahertz of prime mid-band spectrum in the 12 GHz Band (12.2-13.25 GHz) for new and innovative uses. These are airwaves are right in the middle of the 7-16 GHz band that we have identified as the sweet spot for the next generation of wireless technology—or 6G. We are the first country in the world to identify these bands for new wireless use and take action.

I believe these airwaves can be optimized with a mix of licensed, unlicensed, and space-based services. The 12.7-13.25 GHz band is a prime candidate for new mobile use, so we are exploring how to put it in the pipeline for new wireless broadband, which is critical for United States wireless leadership.

Last year, we took action to ensure the present and future of satellite services in the 12.2-12.7 GHz band. But we also realize there may be additional potential in these airwaves, so we are exploring ways to enable new uses of this mid-band spectrum, potentially including wireless broadband or expanded backhaul to support advanced broadband, while protecting incumbent satellite functions that millions of people in this country rely on every day.

Since the record in the proceeding closed, Commission staff has been carefully reviewing stakeholder submissions—including technical feasibility studies and suggested coordination mechanisms—with an eye to opening up this band for new services while protecting important satellite services. We aim to conclude our review of these submissions in the coming months and determine whether information before us supports the feasibility for new or expanded services to co-exist with incumbent services in the band.

To be clear, however, further action by the agency on the upper 12 GHz band will not lead to deployment—in Georgia or anywhere else—without Congress first reinstating the Commission's

auction authority. It is essential that Congress do so for the continued leadership of the United States in wireless and for the benefit of people across the country who want for more ways to connect more devices in more places, with greater capacity.

*2. What do you believe the Commission can do in 2024 to create a robust Communications Marketplace Report that reflects the state of competition between AND WITHIN various media platforms?*

**RESPONSE:** In the first half of 2024, the Commission will begin the process of compiling the relevant information and seek comment on the state of competition in the communications marketplace to complete its 2024 Communications Marketplace Report. As with past reports, we will provide a comprehensive evaluation of the state of competition in the communications marketplace, including the video programming marketplace. The Commission must also assess whether laws, regulations, regulatory practices, or marketplace practices pose a barrier to competitive entry or competitive expansion of existing providers. As with past reports, I expect that we will assess the rapidly evolving video programming landscape, which includes the more traditional broadcast and multichannel video programming distributors (MVPDs), as well as newer entrants such as online video distributors and vMVPDs. I will forward your comments and concerns to the Commission staff who work on this report so that they can be considered as we gear up for the 2024 proceeding.

*3. What can the Commission commit to doing that would encourage broadcasters of news, information and music to provide consumers more local, original content?*

**RESPONSE:** Local news is important. It is an essential input in the decisions we all make about our lives and our communities. In light of this and the increasingly nationalized media marketplace, late last year I shared with my colleagues a proposal that would have the Commission prioritize processing the review of applications for license renewals, assignments, or transfers filed by radio and television broadcast stations that provide locally originated programming. This framework would incentivize the production of local programming by providing first-in-class processing and review of applications from broadcast stations that invest in local programming in communities across the country.

*4. As various streaming platforms have emerged, we have seen drastic changes to the digital media landscape. What steps should the FCC take to ensure that the large industry players promote a level playing field and negotiate in good faith with a broad array of smaller and independent content owners to foster a competitive video marketplace?*

**RESPONSE:** The video marketplace has changed significantly with the introduction of streaming services. There are so many new screens and new ways to watch programming. This is exciting for viewers who can consume content from near and far at virtually anytime and anyplace. At the same time, it is important to recognize that television broadcasting, which is uniquely local, and independent programmers, which provide diverse voices, should have the opportunity to thrive in this new landscape.

The primary laws governing the distribution and carriage of programming on multichannel video programming distributors (MVPDs) include the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992. Both of these laws amend the Communications Act. Therefore, this remains the legal framework under which the Commission must assess all issues associated with MVPDs. The issue of whether virtual or streaming options are considered MVPDs is an open issue.

When the Commission last attempted to address this matter, in a rulemaking adopted in 2014, the record revealed significant concerns with the agency asserting jurisdiction over virtual MVPDs in a way that the statutory framework was not designed to support in 1984 or 1992. To understand why, consider that Section 602(13) of the Communications Act defines an MVPD as an entity that "makes available for purchase, by subscribers or customers, multiple channels of video programming." At the same time, Section 602(4) of the Communications Act defines a channel as "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel." It is imperative that the Commission give these words full meaning. As reflected in the record, online video programming distributors do not neatly fit in these statutory definitions because they lack a physical connection to subscribers and do not use any electromagnetic frequencies when delivering programming to their viewers. As you know, the Commission lacks the power to change these unambiguous provisions on its own but can do so if Congress changes the underlying law.

In addition, the record demonstrated that even if the Commission were to proceed, it would require changes to underlying copyright policies. It is not clear if the Copyright Office would, with an altered Commission interpretation of the definition of MVPD, allow the current statutory copyright license to be used by online video programming distributors with respect to the carriage of broadcast channels. As you know, the existing statutory copyright license works hand-in-hand with the broadcast retransmission consent policies in the Communications Act. What this means in practice is that the carriage of broadcast television station signals on traditional MVPDs can take place without negotiations with every single copyright holder associated with the station programming. Without a statutory copyright license applying to new online video programming distributors, those distributors would be obligated to black out programming for which they are not able to negotiate copyright licenses.

To that end, we understand that carriage via online video programming distributors is now the subject of private negotiations between local broadcast stations and their affiliated networks. We are monitoring these efforts, to better understand the consequences for carriage and consumers. We are also continuing to review the record from 2014 to identify outstanding issues.

*5. How do the rising costs of bundled programming impact streaming platforms' ability to make niche channels or channels from independent content providers available to consumers?*

**RESPONSE:** As noted above, the primary authority the Commission has over video programming is laid out in laws from 1984 and 1992 that do not contemplate streaming. However, I agree that the rising cost of bundled programming is an issue that challenges small and independent programmers. That is why this summer I shared with my colleagues a draft

rulemaking that would initiate a new proceeding regarding the current state of the marketplace for diverse and independent programming. The rulemaking would develop a record on the obstacles faced by independent programmers seeking carriage and carriage on online platforms. The rulemaking seeks input on what actions the Commission may take to alleviate such obstacles so that its policies can promote competition in the marketplace consistent with our statutory responsibilities.

**The Honorable John Curtis**

*1. There are millions of Americans, including an increasing number of military veterans, who are experiencing hearing loss. Yet many of these consumers do not even know that the IPCTS Program exists. What efforts are being undertaken by the FCC to ensure that the growing population of Americans with hearing loss can learn about this program?*

**RESPONSE:** IP CTS is a valuable service that the FCC makes available at no cost to people who are deaf or hard-of-hearing. The Telecommunications Relay Service (TRS) Fund provides financial support for IP CTS providers to market their service and to engage in outreach to potential users. For 2023, Fund-supported expenditures on IP CTS marketing and outreach are estimated at more than $70 million. In addition, the FCC provides educational material about IP CTS on its website (https://www.fcc.gov/ipcts) and in regular outreach to relevant stakeholders.

*2. Technological advances in communications services have benefited consumers across the United States. What is the FCC doing to ensure that communications services for people with hearing loss, especially IP-CTS, are similarly incorporating advances in technology?*

**RESPONSE:** The Commission has taken major steps to ensure that state-of-the-art communications services are available to people with hearing loss. On June 8, 2023, the Commission ruled that video conferencing services like Zoom, Teams, and FaceTime must be accessible to people with hearing loss and other disabilities and proposed specific rule changes to make this happen.

With respect to IP CTS, in 2018 the Commission authorized the use of automatic speech recognition (ASR) technology to provide IP CTS without the need for a human communications assistant. Since providers began using this captioning method in 2020, ASR technology has continued to advance. Increasingly, when consumers have the option to choose their telephone captioning method, they select ASR-only captioning. In order to ensure that ASR performance meets the functional equivalency standard under the law, working with its research contractor the Commission now regularly tests ASR-based IP CTS offerings to monitor performance.

*3. Automatic Speech Recognition (ASR) technology has the potential to revolutionize Internet Protocol Captioned Telephone Services (IP CTS). Yet ASR is still a relatively new technology. What is the FCC doing to ensure that consumers still have options with respect to the type of IP*

*CTS they utilize? Additionally, how is the FCC thinking about quality, quality metrics and measurements to ensure the ASR technology is operating within established guidelines?*

**RESPONSE:** In a pending rulemaking, the Commission is presently evaluating how to structure TRS Fund compensation of IP CTS providers so that consumers continue to have options to use either ASR or communications assistant-assisted IP CTS. We recognize that consumers may prefer one form of IP CTS over the other, and our goal is to provide a compensation structure that enables IP CTS providers to continue to provide users with this choice.

In addition, the Commission has an open proceeding in which it is evaluating questions related to whether and how to adopt metrics to determine the quality of both ASR- and communications assistant-generated IP CTS. Currently, a working group is addressing issues related to IP CTS metrics under the guidance of the Commission's research contractor. We anticipate that the working group will produce a report in 2024 that will help to focus future research efforts in this area.

**The Honorable Randy Weber**

*In your satellite streamlining rules, you have included a timeline for the FCC to open satellite spectrum license applications to public comment, but you have not instituted any timeline for the FCC taking ultimate action on that application. Your agency also declined to adopt "shot-clocks" for taking action on earth station license applications and even just "straight forward" applications.*

*1. How does the FCC plan to address this disparity between having a shot-clock for public comment, but not for ultimate decision-making?*

**RESPONSE:** The space economy is growing and as a result the number of applications for space and earth stations before the Commission are increasing in both number and complexity. To give you a sense of just what that means, we now have applications for novel space activities like lunar landers, space tugs that can deploy other satellites, and space antenna farms that can relay communications. To address this growth, I have made big changes at the Commission. We launched the first-ever Space Bureau to support United States leadership in the space economy, promote long-term technical capacity to address satellite policies, and improve our coordination with other agencies. In addition, I have increased the number of staff working on these matters to improve our capacity and assist applicants, including those with near-term launch windows, to get the authorizations they need.

On top of prioritizing resources to address the growing number of applications, the agency is also working to streamline the processing of commercial satellite and earth station applications. On September 23, 2023, we adopted an order eliminating old rules that no longer support the current space industry, and establishing clear timeframes for placing space and earth station applications on public notice. As a result, applications for geostationary orbit satellites and earth stations are

generally placed on public notice within 30 days and applications for non-geostationary orbit satellites are generally placed on public notice within 60 days. If applications are not ready to be placed on public notice due to questions, errors, or omissions, applicants are notified and staff engage with the applicants. We also eliminated outdated prohibitions that limited the number of applications non-geostationary satellite operators or applicants could have on file, which simplifies both the filing requirements and staff review of applications. We created a new, streamlined processing framework for earth station operators to add satellite points of communication, in which certain modifications are auto-granted 35 days after being put on public notice.

The new timelines that the Commission established for the initial phase of application review aim to provide applicants with clarity at this crucial initial review phase. The next phase of review, after applications are placed on public notice, the Commission assesses the merits regarding the application—including grappling with novel technical and safety issues, addressing concerns raised in comments, and determining whether conditions, if any, are necessary. In addition, this stage of review may require coordination outside the Commission. For example, coordination with the National Telecommunications and Information Administration may be required where spectrum is shared with federal users, like the Department of Defense. Collaboration with our counterparts in other countries may also be necessary to, among other things, coordinate operations near the border. This combination of technical issues, opposition that needs to be addressed, and coordination with national and international stakeholders is time-intensive, especially when novel approaches are at issue in any application. While in many cases this process is not naturally amenable to simple shot clocks, in others where it is—as with earth station operators adding additional points of satellite communications—we have adopted them.

In the meantime, we are continuing our streamlining efforts and working to identify other areas where we can make changes. In a rulemaking adopted on December 21, 2022, the Commission sought comment on expediting the processing of earth and space station applications and deadlines for final action on certain types of satellite or earth station applications. The comments we received on this matter, including from industry, were divided on the matter of shot clocks—whether or not they were a good idea and if they were, for what types of applications and for what length of time. That is why on September 21, 2023, the Commission sought updated comment on this subject in order to refine our questions and identify where there may be viable new timelines for taking action on the merit of an application in an expeditious way while also ensuring that statutory requirements are fully met. Comments are due on January 8, 2024 and reply comments are due on February 6, 2024. I look forward to reviewing the record on this matter.

Finally, as a related matter, the Space Bureau has launched a Transparency Initiative with frequently asked questions, workshops, and more. It is aimed at providing applicants with the tools and knowledge they need to get their applications filed as quickly as possible and with the information necessary to obtain the authorizations they need. The Commission hosted its first public event—a workshop on space station licensing—on November 1, 2023. The Bureau will continue its efforts this year, including a workshop on earth station licensing next week on

January 10. Transparency Initiative resources are posted on the Commission's website and are designed to be readily accessible for satellite operators and start-ups alike.

*2. When can we expect you to finalize rules that include a timeline for the FCC releasing decisions on these application reviews?*

**RESPONSE:** The Commission's September 21, 2023 rulemaking sought comment on how establishing timelines or shot clocks for taking action on the merits of applications could be implemented to support the burgeoning space economy while also ensuring that key public interest considerations and statutory requirements continue to be met. As noted above, comments are due on January 8, 2024 and reply comments are due on February 6, 2024. Following review of the record, the agency will be in a better position to identify what next steps to take and when.

*The FCC adopted new rules to accelerate the process for considering satellite applications. The most important new reform in this "Satellite Streamlining Order" is that the FCC would start the review process of new applications within 60 days. But I've heard concerns that the staff might still hold certain applications, effectively prejudging the outcomes without notice and comment.*

*3. Are you applying this 60-day requirement equally to all applications, including those that have already been sitting at the Commission for months?*

**RESPONSE:** The Commission makes every effort to treat all applicants equally and process applications in the most efficient and time-sensitive manner. Applications submitted for licensing and requests for market access go through a rigorous initial review even before they are formally accepted for filing. This helps to ensure completeness and compliance with the Commission's rules, regulations, and requirements.

The Commission's order establishing new 30- and 60-day timelines related to acceptability for filing goes into effect on January 5, 2024. The aim of these timelines is to provide applicants with clarity on their application status at this crucial initial review phase. In the meantime, Space Bureau staff have been making every effort to apply the new timelines to applications going forward. For applications in which inconsistencies, errors, or omissions have been identified, Commission staff work with applicants to address those issues so that applications may be accepted.

*The digital discrimination rules recently issued by the FCC are broad, and many of us have concerns that providers will not know whether or not they are in violation of, in particular, the disparate impact requirement.*

*4. How will the FCC determine if a provider has violated these rules? Do you plan to mandate that providers collect personal data like race, income, and other characteristics from their customers?*

**RESPONSE:** The Commission has implemented its policies to prevent digital discrimination in a manner that is balanced and fully consistent with its obligations under the Bipartisan Infrastructure Law. The order does not adopt a formal complaint process for third parties and the statute does not create a private right of action. As a result, only the Commission's Enforcement Bureau has authority to enforce the statute. Even then, before any liability can attach, the Bureau will have to identify a specific policy or practice that has a discriminatory impact on one or more of the protected classes enumerated by Congress in the law. If that happens, providers will have an opportunity to demonstrate, consistent with the law, that it was technically or economically infeasible to provide equal access. In addition, the Bureau will have to show that a less discriminatory alternative was available to the provider.

This process is thoughtful and careful. However, in order to ensure that regulated entities have additional guidance we have set up a system for advisory opinions from the Enforcement Bureau. We also have delayed enforcement of disparate impact liability for six months to allow companies to address compliance. On top of this, we have created a new position of Special Advisor for Equal Broadband Access to provide neutral technical assistance to all stakeholders upon request, including complainants and regulated entities. Finally, we are charging the Communications Equity and Diversity Council with the task of exploring whether additional guidance or safe harbors should be made available.

With respect to your last question, the Commission's rules do not mandate that providers collect personal data like race or income from their customers.

**The Honorable Rick Allen**

*1. Is the Commission considering any internal rule changes, such as implementing a shot clock or expediting the review process for broadcast license transfers and mergers in some other way, that would more closely align the Commission's processes in these matters with the rapid pace which the free market operates?*

**RESPONSE:** The Commission has traditionally endeavored to complete its review of all transactions and issue an order withing 180 days of accepting the application for filing. While the agency strives to adhere to this timeline, due to issues outside of the Commission's control that may not always be possible. For instance, it may be necessary to seek additional information from the applicants that was not disclosed as part of the original application, or the applicants may materially modify the terms of the transaction while it is pending, which requires additional review and comment by interested parties. In addition, national security reviews of transactions with foreign investment may take additional time. While this national security review is performed by other agencies, the Commission will typically need to perform its own review only after security matters are addressed, which can delay the timeline.

Late last year, I shared a rulemaking proposal with my colleagues that would have the Commission prioritize processing the review of applications for license renewals, assignments or transfers filed by radio and television broadcast stations that provide locally originated programming. This framework would incentivize the production of local programming by

providing first-in-class processing and review of applications from broadcast stations that invest in local programming in communities across the country.

**The Honorable August Pfluger**

*1. In your November 30 testimony, you suggested that the Commission cannot produce a spectrum calendar as called for by Sec. 512 of the Ray Baum's Act because the Commission's spectrum auction authority has lapsed. Assuming auction authority will be restored, what bands would you expect to bring to auction and what would the intended schedule for these auctions be? Will you commit to outlining additional opportunities for spectrum auctions that are further than one year out?*

**RESPONSE:** Section 512 of RAY BAUM's Act requires the Commission to annually produce a spectrum calendar that is an estimate of the systems of competitive bidding that will be used in the coming year. To be clear, the agency has produced this calendar in recent years, including on September 29, 2023; September 30, 2022; and September 30, 2021. As I suggested at the hearing and you note above, with the lapse of the Commission's spectrum authority this calendar has ceased to be as useful and meaningful as it has been in the past.

To be clear, without Congress reinstating this authority, the agency no longer has the ability to hold spectrum auctions. For three decades these auctions have been a powerful tool to support wireless deployment and innovation that in turn, have helped make the United States a global leader in spectrum technology. It is imperative that Congress renew the Commission's spectrum auction authority as soon as possible. When we when we do not have this authority, we simply lack the foundation we need to compete in a global digital economy, counter our adversaries' technology ambitions, and safeguard our national security.

In the meantime, there are several near-term actions that the Commission is exploring for when authority is restored. First, the Commission can move forward quickly with an auction of 5G-capable licenses that are already in the Commission's inventory. I mentioned many of these bands in our conversation during the hearing. They include licenses in core 5G bands, which have been returned to the Commission or went unsold during prior auctions, that can be and put to use immediately to improve coverage and capacity. Second, the Commission has identified 550 megahertz of mid-band spectrum in the 12 GHz Band (12.7-13.25 GHz) for new mobile use. These are airwaves are right in the middle of the 7-16 GHz band that we have identified as the sweet spot for the next generation of wireless technology—or 6G. We are the first country in the world to identify these bands for new wireless use and take action, and we are exploring how to put it in the auction pipeline for new wireless broadband. Third, there are a range of other bands that are featured in the National Spectrum Strategy that we are reviewing, along with our counterparts in other federal agencies. The strategy puts 2,786 megahertz on the table for study for future commercial spectrum use.

This year, as in the past, the Commission will produce a calendar as required under the RAY BAUM's Act. As you may know, the law only requires information regarding auctions during the next year. However, the agency can provide additional information about bands that are

under review for commercial use over a longer period. But to do so in an effective manner, the Commission will need Congress to restore its spectrum auction authority.

*2. If federal spectrum is reallocated for commercial use, what is the earliest time frame in which you could conduct a significant auction?*

**RESPONSE:** This is a case specific question. The answer ultimately depends on what incumbent use is present in the band at issue, what relocation will entail, and what new or novel procedures might be involved in commercial auction.

In general, when specific federal spectrum is identified for commercial use, the Commission must develop and seek public input on the service rules that will govern operations within the band. Depending on the spectrum to be auctioned and whether it will be shared with federal incumbents, these rules will also require input from federal partners, and a sharing mechanism may need to be developed with their input. Next, the Commission must develop and seek public input on the procedures for an auction and modify our auction IT systems accordingly. The timelines for these steps can vary, but recent auctions—like the one for the 3.45 to 3.55 GHz band—can provide insight into the length of the process from rulemaking to bidding. It took approximately one year from the release of the first rulemaking that sought comment on service rules to the start of bidding in the auction for licenses in the band. This was possible, in part, because of close coordination with our federal partners involved in the repurposing of this band. While different bands present different issues, the Commission will always strive to move forward expeditiously on any auction of repurposed federal spectrum.

*3. You recently stated that the FCC has applications for more than 56,000 satellites pending before the Commission, twice the number of applications the FCC had just four years ago. While this is a positive sign for American innovation, I'm concerned with the challenges on launch constraints in the industry, and the need for a satellite company to have FCC approval before commercial services are granted. What are you doing to prioritize applications and allocate FCC resources with near term launch deployments? Further, does the FCC have any examples of how you are streamlining the application process?*

**RESPONSE:** The space economy is growing and as a result the number of applications for space and earth stations before the Commission are increasing in both number and complexity. To give you a sense of just what that means, we now have applications for novel space activities like lunar landers, space tugs that can deploy other satellites, and space antenna farms that can relay communications. To address this growth, I have made big changes at the Commission. We launched the first-ever Space Bureau to support United States leadership in the space economy, promote long-term technical capacity to address satellite policies, and improve our coordination with other agencies. In addition, I have increased the number of staff working on these matters to improve our capacity and assist applicants, including those with near-term launch windows, to get the authorizations they need.

On top of prioritizing resources to address the growing number of applications, the agency is also working to streamline the processing of commercial satellite applications. On September 23, 2023, we adopted an order eliminating old rules that no longer support the current space

industry, and establishing clear timeframes for placing space and earth station applications on public notice. As a result, applications for geostationary orbit satellites and earth stations are generally placed on public notice within 30 days and applications for non-geostationary orbit satellites are generally placed on public notice within 60 days. If applications are not ready to be placed on public notice due to questions, errors, or omissions, applicants are notified and staff engage with the applicants. We also eliminated outdated prohibitions that limited the number of applications non-geostationary satellite operators or applicants could have on file, which simplifies both the filing requirements and staff review of applications. We created a new, streamlined processing framework for earth station operators to add satellite points of communication, in which certain modifications are auto-granted 35 days after being put on public notice.

The new timelines that the Commission established for the initial phase of application review aim to provide applicants with clarity at this crucial initial review phase. The next phase of review, after applications are placed on public notice, the Commission assesses the merits regarding the application—including grappling with novel technical and safety issues, addressing concerns raised in comments, and determining whether conditions, if any, are necessary. In addition, this stage of review may require coordination outside the Commission. For example, coordination with the National Telecommunications and Information Administration may be required where spectrum is shared with federal users, like the Department of Defense. Collaboration with our counterparts in other countries may also be necessary to, among other things, coordinate operations near the border. This combination of technical issues, opposition that needs to be addressed, and coordination with national and international stakeholders is time-intensive, especially when novel approaches are at issue in any application.

Finally, the Space Bureau has launched a Transparency Initiative with frequently asked questions, workshops, and more. It is aimed at providing applicants with the tools and knowledge they need to get their applications filed as quickly as possible and with the information necessary to obtain the authorizations they need. The Commission hosted its first public event—a workshop on space station licensing—on November 1, 2023. The Bureau will continue its efforts this year, including a workshop on earth station licensing next week on January 10. Transparency Initiative resources are posted on the Commission's website and are designed to be readily accessible for satellite operators and start-ups alike.

The Commission is continuing to identify new ways to update and speed processing, in light of the volume before us and mindful of increasing complexity of applications. On September 23, 2023, we sought further public comment on additional streamlining measures. Comments are due on January 8, 2024 and reply comments are due on February 6, 2024.

*4. The Commission is supposed to be an enabler of wireless innovation, and in this case has three levers it can pull - (1) access to spectrum, (2) power levels that devices can operate at, and (3) clearly defining the classes of devices that the Commission will approve and the requirements for each. Have those levers been used to maximize innovation for Wi-Fi?*

**RESPONSE:** The Commission is charged with overseeing the use of non-federal spectrum for licensed and unlicensed purposes. While licensed airwaves often get the glory, so much in our

daily lives runs on unlicensed spectrum, like Wi-Fi. So a few years ago, when the global pandemic put our Wi-Fi routers centerstage, the Commission determined it was vital to identify additional spectrum to carry our unlicensed wireless activity. As fiber, cable, and commercial wireless move to gigabit speeds, we need to ensure our Wi-Fi connections have the wider channels and additional bandwidth they need to keep pace. So we pulled all three levers to open access to over 1200 megahertz of spectrum in the 6 GHz band for unlicensed use, particularly Wi-Fi. We approved low-power, indoor-only operations and standard power operations that utilize automated frequency coordination to expand the efficient and innovative use of the band while also protecting incumbents. To keep our progress on this front growing, on October 19, 2023, the agency opened up 850 megahertz of the band for a new class of mobile, very low power devices and sought comment on opening up the remaining 350 megahertz in this band for such devices. This puts the United States in a position to lead on unlicensed use in this band and develop new wearable technologies and augmented and virtual reality applications that can uniquely use the wide channels and capacity.

In addition, we are looking at other bands for potential unlicensed or license-light access, consistent with the three levers that you identify. For instance, we have proceedings on potential unlicensed use or innovative spectrum access frameworks in the 12.2-12.7 GHz band and the 42 GHz band. Going forward, we will continue to explore ways to maximize the use of those bands and for more opportunities to support unlicensed innovation.

*5. How does the FCC plan to collaborate with the NTIA as they initiate their study of the 7 to 8 GHz band?*

**RESPONSE:** The Commission intends to work collaboratively with NTIA and other federal agencies in studying the 7 and 8 GHz band. As an initial matter, the President's Memorandum on Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy (Presidential Memorandum) establishes an Interagency Spectrum Advisory Council (Council) to serve as the principal interagency forum for heads of agencies, including the Commission, to advise on spectrum policy matters. NTIA is required to publish the Council's charter within 90 days of the Presidential Memorandum's issuance. The charter is expected to provide further detail on the scope of the Council's work with respect to spectrum policy matters.

Furthermore, the Presidential Memorandum requires the Secretary of Commerce, acting through NTIA and in coordination with the Council, to publish an Implementation Plan for the National Spectrum Strategy within 120 days of issuance of the Presidential Memorandum. The Implementation Plan will set forth a schedule for detailed study of bands identified in the Strategy, including the 7 and 8 GHz band. Consistent with the Presidential Memorandum, the Commission intends to provide input regarding the development of the Implementation Plan.

Finally, in addition to the Implementation Plan and the Council's charter, the Commission will continue to collaborate with NTIA and the Interdepartment Radio Advisory Committee pursuant to the Memorandum of Understanding the Commission signed with NTIA on August 1, 2022. The Memorandum of Understanding establishes a coordination framework between the Commission and NTIA on, among other things, matters involving spectrum bands authorized for Federal use.

*6. Due to massive cost increases, RDOF winners are facing unanticipated hurdles before the 2020 RDOF auction, which were mainly prompted by President Biden's various broadband funding grant programs in ARPA and BEAD. RDOF winners filed an Emergency Petition on August 17, 2023, seeking various forms of relief, like relieving RDOF winners of all or certain aspects of the RDOF's LOC requirement and opening an amnesty window. Because "time is of the essence" on the relief requested, can you commit to promptly issuing an order that grants all or certain aspects of the Emergency Petition's requested relief?*

**RESPONSE:** The Commission's Rural Digital Opportunity Fund program was designed to bring broadband to unserved rural communities across the country, which is essential for full participation in modern life. High-speed internet access is no longer just a nice-to-have; it is need-to-have for everyone, everywhere.

Commission staff have met with the Coalition of RDOF winners multiple times to discuss their emergency petition. As you note, the petitioners are seeking various forms of relief including supplemental RDOF funding, relief from aspects of the RDOF letter of credit requirements, expediting RDOF support payments, and opening an amnesty window that would allow providers to withdraw from the program without penalty. Note that these kind of changes would be made after a binding auction and as a result there is opposition to these proposals. Consequently, the petition remains under review.

In addition, it is important to recognize that the Commission has authorized more than $6 billion for RDOF support, which is funded through the Universal Service Fund. In order to accommodate requests for supplemental or expedited RDOF support, the agency would need to collect additional funding, which it does not have on hand. This would require an increase in the contribution factor and new collections from consumers on their monthly bills.

As noted above, this was a binding auction, so the Commission set rules of the road to ensure that winning bidders would fulfill their promise to use this funding to build new broadband infrastructure on terms consistent with their winning bids. The RDOF letter of credit requirements protect the Universal Service Fund in the event a provider fails to meet its milestones and fails to timely cure its non-compliance.

Nonetheless, the agency set rules to govern default, that include forfeiture penalties and are designed to impress upon RDOF recipients the importance of being prepared to meet all Commission requirements and be prepared to fulfill RDOF deployment obligations. However, if a provider requests a specific waiver of the Commission's rules on forfeiture penalties associated with RDOF, I ensure you that agency staff will carefully consider such requests to determine, consistent with the law, whether special circumstances warrant a deviation from the general rule, and if such a waiver would be in the public interest.

*7. The FCC's latest Data Breach Reporting Order takes the position that "the floor debate supporting the resolution of disapproval in 2017 [of the 2016 Privacy Order] did not mention the breach notification provision." Yet during the House debate, House members repeatedly raised data security and data breaches as a key reason for the 2017 Resolution of*

*Disapproval. For example:*

- *Then-Representative Blackburn, the Resolution of Disapproval's House sponsor, urged passage of the resolution in part because "the economic fallout from something such as a data breach" would serve as a better deterrent against data security breaches than the 2016 Privacy Order;*
- *Then-Chairman of the House Energy and Commerce Committee Walden explained that the 2016 Privacy Order's "approach only protects consumer data as far as the internet service provider is involved," so it was ineffective; and*
- *Representative Flores explained that the Resolution "does not lessen or impede the privacy and data security standards that we already have established."*

*House Members opposed to the 2017 Resolution of Disapproval also repeatedly invoked data security and data breaches. Similarly, Senate members supporting and opposing the 2017 Resolution of Disapproval made statements citing data security and data breaches to explain their positions. Please explain why the Data Breach Reporting Order ignores the multitude of floor statements related to data security and data breaches made during debate of the 2017 Resolution of Disapproval. If the quoted language was modified or removed from the final order in any way, please explain each modification/removal and why it was made.*

**RESPONSE:** The Congressional Review Act states that an agency rule "may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." 5 U.S.C. § 801(b)(2).

In the order updating the Commission's data breach policies that was adopted in 2023, the agency addressed why the decision does not take any action or issue any rules that are prohibited by the Congressional Review Act. This discussion was in featured in paragraphs 133 to 143 of the agency's 2023 order.

In the 2023 order, the Commission revised its rules governing when telecommunications carriers, providers of interconnected Voice over Internet Protocol services, and providers of telecommunications relay service must report breaches of customer information to governmental entities and affected consumers. As the Commission noted at paragraph 141 of the order, the decision in 2016 was focused on adopting privacy rules for broadband internet access service. As part of this effort, it made a number of changes to the Commission's privacy rules more generally that, among other things, required carriers to disclose their privacy practices; revised the framework for customer choice regarding carrier access, use, and disclosure of the customer information; and imposed data security requirements in addition to data breach notification requirements. When the order from 2016 is viewed as a whole, there is little point-to-point comparison between it and the order adopted in 2023 given the difference in scope. The former is focused on a wide range of broadband privacy rules; the latter is specifically focused on the notification required in the event a carrier discloses personal data from voice service customers to an unauthorized person.

As the Commission explains at paragraph 133 of the order from 2023, when Congress adopted its resolution of disapproval in 2017, it nullified all of the rule changes adopted in the order from 2016, and the Commission implemented that resolution by reversing all of the changes the order had made. As a result, the order from 2023 concludes, at paragraph 137, "that it would be erroneous to construe the resolution of disapproval as applying to anything other than all of the rule revisions, as a whole, adopted as part of the [order from 2016]." It explains that neither the Congressional Review Act nor the resolution of disapproval can be interpreted as prohibiting an agency from adopting a rule that is merely substantially similar to a limited portion of the disapproved rule, from adopting a rule that is the same as individual pieces of the disapproved rule, or from making any of the individual decisions made in an entire disapproved rulemaking action. As a result, the order from 2023 concludes that the rules it adopts are clearly not substantially the same as the rule Congress specified in the 2017 resolution of disapproval, which was the 2016 order addressing internet broadband privacy as a whole.

The 2023 order also explains at paragraph 142 that, even if the "substantially the same" analysis were conducted on a more granular basis, these more recent breach notification requirements would not be barred because they are not substantially the same as the breach notification requirements adopted in the 2016 order. For example, the customer notification requirement adopted in 2023 is materially less prescriptive regarding the content and manner of customer notice than what the Commission adopted in 2016. Further, the 2016 rules for customer notifications and government agency notifications did not incorporate the good-faith exception from the definition of covered breaches adopted in 2023. With respect to the federal agency notification requirements, as compared to the 2016 rules, the 2023 rules provide for the Commission and other law enforcement agencies to gain a much more complete picture of data breaches, including trends and emerging activities, consistent with the demonstrated need for such oversight.

As noted in paragraph 138 of the 2023 order, the legislative history of the Congressional Review Act makes clear that an agency is not foreclosed from further action in the same substantive area as a disapproved rule. Instead, when taking action in that area, the agency should look to "the debate on any resolution of disapproval" to understand "the congressional intent regarding the agency's options or lack thereof after enactment of a joint resolution of disapproval." The order from 2023 observed at paragraph 139 that members speaking in support of the 2017 resolution of disapproval generally highlighted aspects of the 2016 order that imposed privacy or preventative security obligations on internet service providers. Breach reporting obligations were not a focus of the 2016 decision. I would add, in response to your specific questions, that floor statements from members about data security and data breaches did not clearly demonstrate any congressional concern about notification requirements. Moreover, the rules adopted in the 2023 order did not address providers' substantive obligations to protect customer data beyond their obligation to report breaches to customers and government.

Finally, the language quoted above in your question is from the public draft of the Commission's 2023 order. It was slightly modified in the final version, which was adopted by the Commission on December 13, 2023 and released on December 21, 2023. The text at paragraph 139 of the 2023 order now reads: "Accordingly, we observe that, in the floor debate on the resolution of disapproval in 2017, supporters of the resolution did not mention the breach notification

provision apart from a brief reference." The modification refers to a statement by Representative Burgess that aspects of the 2016 order that treat internet service providers differently from providers of other internet-related services may result in more frequent breach notifications.

**The Honorable Diana Harshbarger**

*1. I understand that your forthcoming order on pole attachments and replacements will provide some clarity around a fair allocation of costs for aging poles or poles that are not in compliance with certain rules and regulations. While this clarity is helpful, what is the Commission doing to clarify a fair allocation of costs when a pole must be replaced for other reasons, such as when the pole is too short to accommodate broadband infrastructure, a common occurrence? If it is not addressed in its forthcoming pole order, will the Commission commit to establish comprehensive cost allocation principles to ensure a fair allocation of costs between pole owner and attacher no later than June 2024?*

**RESPONSE:** As you suggest, last month the Commission adopted an order and declaratory ruling providing clarity about obligations for both pole attachers and pole owners. It addresses what are known as "red tagged" poles, which are poles that a pole owner has identified as needing replacement. In particular, it clarifies that this term should be understood more broadly to include poles that the utility identifies for replacement for any reason other than the pole's lack of capacity to accommodate a new attachment. In this action, the agency also offered additional examples where a pole replacement is not "necessitated solely" by a new attachment or modification request when a pole already requires replacement. These examples, which are not exhaustive, are designed to help utilities and attachers better understand situations when, under the agency's cost-causation principles, it would be contrary to the Commission's rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement.

Issues raised in the Commission's rulemaking on this subject from 2022 that were not addressed in our recent order and declaratory ruling, along with issues raised in the new rulemaking adopted in conjunction with this recent action, remain pending before the agency. We will continue to monitor the state of broadband deployment and the record in the proceeding to determine what additional Commission action may be warranted.

**The Honorable Doris Matsui**

*1. The FCC is currently considering a Further Notice of Proposed Rulemaking (NPRM) on Expanding Flexible Use of the 12.2-12.7 GHz Band (WT Docket No. 20-443). The FCC has been examining this band in some form since 2020. Chairwoman Rosenworcel, can you provide an update on the status of this NPRM?*

**RESPONSE:** The Commission has identified more than 1000 megahertz of prime mid-band spectrum in the 12 GHz Band (12.2-13.25 GHz) for new and innovative uses. These are airwaves are right in the middle of the 7-16 GHz band that we have identified as the sweet spot

for the next generation of wireless technology—or 6G. We are the first country in the world to identify these bands for new wireless use and take action.

I believe these airwaves can be optimized with a mix of licensed, unlicensed, and space-based services. The 12.7-13.25 GHz band is a prime candidate for new mobile use, so we are exploring how to put it in the pipeline for new wireless broadband, which is critical for United States wireless leadership.

Earlier this year, we took action to ensure the present and future of satellite services in the 12.2-12.7 GHz band. But we also realize there may be additional potential in these airwaves, so we are exploring ways to enable new uses of this mid-band spectrum, potentially including wireless broadband or expanded backhaul to support advanced broadband, while protecting incumbent satellite functions that millions of people in this country rely on every day.

Since the record in the proceeding closed, Commission staff has been carefully reviewing stakeholder submissions—including technical feasibility studies and suggested coordination mechanisms—with an eye to opening up this band for new services while protecting important satellite services. We aim to conclude our review of these submissions in the coming months and determine whether information before us supports the feasibility for new or expanded services to co-exist with incumbent services in the band.

*2. The FCC recently unanimously adopted a proposed rulemaking to establish a U.S. Cyber Trust Mark. This effort will empower consumers and raise the collective bar for cybersecurity in the growing internet of things market. In addition to the benefits for consumers, the Cyber Trust Mark can create opportunities to leverage economies of scale for manufacturers. For this to happen, the U.S. must collaborate with our global peers to harmonize these important efforts.*

*Chairwoman Rosenworcel, can you describe the FCC's efforts to collaborate with your federal partners to ensure the work the Commission is doing on the Cyber Trust Mark can be recognized internationally? Do you believe the Cyber Trust Mark will be in circulation for the 2025 holiday season?*

**RESPONSE:** Since the Commission's adoption of the notice of proposed rulemaking, the Commission has worked with our U.S. government partners, including the National Security Council and the National Institute of Standards and Technology, and with our regulatory counterparts around the world to brief them on the Commission's efforts and understand where various international efforts are progressing. In this respect, we have briefed our counterparts in Australia, New Zealand, India, Japan, the U.K., the E.U., and Canada, and taken from those engagements valuable lessons about their work as well. We believe that the U.S. can be a leader in this regard, and the U.S. Cyber Trust Mark can be positioned as a mark of distinction that signals to consumers globally that devices or products bearing the U.S. Cyber Trust Mark meet meaningful security standards.

While the Commission is still considering the record and developing next steps, we are closely considering how the U.S. Cyber Trust Mark will resonate within the global IoT labeling environment. We recognize the efficiencies that can be achieved through appropriate cross-border harmonization, incentivizing manufacturers to participate in the program, and elevating the security of the Internet of Things ecosystem across the board.

My expectation is that rules will be in place by the end of 2024.

*4. In your October 12 letter to Congress you noted, regarding the shortfall in the Secure and Trusted Communications Networks Reimbursement Program, that "It is important to note, however, that the grant of these extensions does not lessen the urgency for a fully funded Reimbursement Program. Indeed, the lack of full funding means that insecure equipment will remain in our Nation's communications networks for a longer period." Chairwoman Rosenworcel, could you elaborate on the threat posed by allowing Chinese gear to remain in our networks while Congress considers how to address the shortfall?*

**RESPONSE:** When Congress passed the Secure and Trusted Communications Networks Act in 2019, it directed the Commission to remove insecure equipment and services from our Nation's communications networks. To that end, the agency has worked expeditiously to establish and successfully implement the Secure and Trusted Communications Networks Reimbursement Program. The Secure and Trusted Communications Networks Act requires that Reimbursement Program recipients complete the permanent removal, replacement, and disposal of Huawei and ZTE communications equipment and services in their networks within one year of the first distribution of reimbursement funds to the recipient. Under program rules, applicants approved for funding support in the Reimbursement Program were required to submit at least one reimbursement claim to the agency by July 17, 2023. However, the Commission has subsequently received and granted several requests to extend Reimbursement Program recipients' one-year removal, replacement, and disposal term by six months, as many of the applicants requesting extensions have indicated they are unable to timely complete this project without full funding. While the law permits the Commission to provide such six-month extensions if they are "due to no fault of such recipient," the lack of full funding ultimately means that this insecure equipment remains in our Nation's communications networks for a longer period, thus delaying the realization of congressional intent under the law to remove Huawei and ZTE communications equipment and services from our communications infrastructure.

*5. Despite the Reimbursement Program funding shortfall, it is imperative the FCC quickly distribute the existing funding consistent with congressional intent. I understand the FCC has begun taking steps to provide additional resources to support timely approval of invoices and reimbursement distribution. I appreciate this step and your leadership in marshalling this critical national security program. Chairwoman Rosenworcel, please describe the FCC's efforts to ensure the existing $1.9 billion in the Reimbursement Program is distributed quickly.*

**RESPONSE:** I appreciate your recognition of the Commission's work on this initiative to secure our Nation's communications networks. The agency has made the successful implementation of

the Reimbursement Program one of its top priorities. As a result, the Commission staff and our fund administrator have been working diligently to ensure that the current $1.9 billion appropriation is distributed to program participants for eligible expenses.

The Commission recently submitted its Fourth Report to Congress on the progress of the Reimbursement Program, and I am pleased to report that Reimbursement Program recipients continue to progress with their plans to permanently remove, replace, and dispose of covered communications equipment and services. Based on the most recent round of status reports and final certifications, we estimate that 10 percent of recipients have completed the permanent removal, replacement, and disposal of *all* of the covered communications equipment and services in their networks. The remaining 90 percent of recipients have made some progress in their projects.

To give you a sense of the magnitude of the effort, as of December 29, 2023, the agency, working with the fund administrator, has received 12,983 reimbursement claims across 122 of the 126 applications approved for a funding allocation. This has resulted in approval of $396,526,243 in reimbursement claims, for which funds have been fully disbursed to recipients or are in the process of being disbursed through the Department of Treasury. To view this data another way, it means that as of December 29, 2023, the Commission has approved disbursements of reimbursement funds for 115 of the 122 applications where at least one reimbursement claim was filed. Commission staff continue to review claims filed by the remaining seven recipients who have filed a reimbursement claim that has not yet been approved.

**The Honorable Anna Eshoo**

*1. The Federal Communication Commission's (FCC) jurisdiction over communications providers gives it an important role to play in protecting the privacy of American consumers, including the collection, processing, transfer, or security of covered data.*

a. *What statute or statutes provide the FCC authority to protect consumer privacy?*
b. *How does the FCC use these authorities to protect consumer privacy?*
c. *Why is it important for the FCC to retain all its authority to protect consumer privacy?*
d. *How would American's consumer privacy be compromised if the FCC' s authority to protect consumer privacy were preempted or reduced?*

**RESPONSE:** Sections 201(b), 222, 225, 338(i), and 631 of the Communications Act of 1934, as amended (47 U.S.C. §§ 201(b), 222, 225, 338(i), 551) grant the Commission a range of authority to protect consumer privacy.

For the purposes of this discussion, it is useful to focus on Section 222. Section 222(a) imposes a duty on carriers to "protect the confidentiality of proprietary information of, and relating to" customers, fellow carriers, and equipment manufacturers. Both subsections 222(a) and (c) independently provide the Commission the authority to adopt rules requiring telecommunications carriers and interconnected voice over IP providers to address breaches of customer information, but the breadth of section 222(a) provides the additional clarity that the Commission's breach

reporting rules can and, because consumers expect to be notified of substantial breaches that endanger their privacy, should apply to all personally identifiable information rather than just to customer proprietary network information.

Last month the Commission updated its breach reporting policies under Section 222. These are the first substantive changes to these rules in sixteen years and clarify that consumers are notified when some fundamentally private things—like social security numbers and financial information—are the subject of data breaches. With the increase in frequency and severity of data breaches over recent years, these updates demonstrate the importance of the Commission retaining and implementing its existing authority—under Section 222 and the other provisions noted above—to continue to protect consumer privacy under the Communications Act.

*2. On September 28, 2023, the FCC issued a Notice of Proposed Rulemaking (NPRM) on Safeguarding and Securing the Open Internet, which if adopted, would propose to reestablish the FCC's authority over broadband Internet access service by classifying it as a telecommunications service under Title II of the Communications Act. The NPRM proposes to reestablish the framework the FCC adopted in 2015 to classify broadband Internet access service as a telecommunications service and to classify mobile broadband Internet access service as a commercial mobile service. Under the 2015 order, the FCC classified resold broadband Internet access service ("BIAS") as a telecommunications service.*

a. *From the FCC's perspective, do resellers of BIAS own the facilities they use to provide BIAS or are they owned by the wholesaler who controls the facilities?*
b. *From the FCC's perspective, is it the underlying wholesaler's conduct that will usually determine the extent to which consumers who purchase BIAS from a reseller receive BIAS consistent with the protections of the rules that are proposed in the NPRM?*

**RESPONSE:** The question of whether resellers or wholesalers own the facilities used to provide BIAS is a fact-specific determination. While it is often the case that the wholesaler will own the underlying facilities, resellers may own parts of the underlying infrastructure in some instances.

Accordingly, the underlying wholesaler's conduct will generally be the most relevant to determine compliance with Open Internet policies. However, in 2015, the Commission placed an obligation on resellers to ensure that the wholesale service the reseller purchases is in compliance with the rules. Furthermore, to the extent that a reseller controls some portion of the network providing service to the customer, the reseller's conduct would be relevant as well.

The current rulemaking proposes that the definition of BIAS include services regardless of whether the Internet Service Provider leases or owns the facilities used to provide the service. This is consistent with the approach the agency took in 2015. However, the Commission is also currently seeking comment on this matter, as well as others, posed by the rulemaking.

**The Honorable Ann Kuster**

*1. Chairwoman Rosenworcel, the Affordable Connectivity Program (ACP) makes broadband service more affordable for more than 22 million households across the country, including*

*almost 40,000 in my district in New Hampshire. Unfortunately, this program is facing an imminent funding cliff and won't last much longer with congressional action. Chairwoman, can you speak to the importance to American families and internet service providers of Congress establishing a sustainable, long-term solution to fund the ACP now and into the future?*

**RESPONSE:** The Affordable Connectivity Program (ACP) is the largest—and most successful—broadband affordability program in our Nation's history. As you noted, more than 22 million households across urban, rural and suburban America rely on the ACP to obtain internet services they need in order to fully participate in civic and economic modern life. It is critical that Congress provide additional funding for this essential program. If ACP support is allowed to expire this year, millions of households could be shut off from the internet service they have come to rely on for school, work, health care and more. We have come too far with this program to turn back. Additional funding is needed to ensure that the ACP continues into the future.

*2. Chairwoman Rosenworcel, while I am committed to developing a long-term plan to fund the ACP, we must prepare for the reality that the program may lapse as soon as April, as you've stated. More concerning, providers will be required to begin notifying their ACP customers of their benefits ending at least 90 days prior to a potential lapse in the program. While prudent, I am concerned about the whiplash American families might face should Congress sustain the program after these notifications are made. Chairwoman, does the FCC plan to provide guidance to providers to help them navigate the looming notice requirements? Has the FCC identified best practices to minimize confusion for consumers and protect their access to affordable broadband services?*

**RESPONSE:** I agree that we need a long-term plan to fund the ACP. I also share your concern that we keep ACP households informed about potential program changes and minimize consumer confusion. If the ACP does not receive additional funding at the start of this year, the Commission will need to start to offer providers guidance about precisely how to notify ACP households about possible program changes. These notices are necessary to ensure that ACP households are aware of the timing and amount of potential changes to their bill if the ACP program ends because Congress does not provide additional appropriated funds.

Based on our consumer outreach experience, we have identified a number of best practices for keeping consumers informed about program changes and minimizing consumer confusion. First, consumers should receive multiple clear, written communications about program changes. Second, providers should communicate about program changes in multiple languages and formats that support consumers with disabilities. Third, stakeholders like external messaging partners and other organizations that work with ACP households, should be made aware of program changes. Fourth, it is helpful to have a toll-free telephone number or easy-to-remember e-mail address for consumer questions. Fifth, on public-facing program websites it is important to display consumer-friendly information regarding program changes. These best practices will be front of mind, should the agency need to proceed with any ACP wind-down processes.

*3. Chairwoman Rosenworcel, Congress has made historic investments in our nation's broadband infrastructure through the establishment of the Broadband Equity Access and Deployment (BEAD) program. To best maximize the impact of this program, we must ensure that broadband providers are able to quickly and efficiently deploy broadband networks in unserved and underserved areas. However, disputes over utility pole access and pole replacements threaten to delay broadband deployment. Chairwoman, the Commission recently adopted new pole attachment rules and proposed additional rules on the timelines for the pole attachment process. Can you share how these actions will help to speed broadband deployment and make the process more affordable?*

**RESPONSE:** As you note, Congress made a historic investment in broadband infrastructure in the Bipartisan Infrastructure Law. But to make sure that this investment connects 100 percent of us, networks need to be designed, rights of way need to be negotiated, and fiber-optic cable needs to be strung from utility poles. This kind of work will take place more smoothly if we get policies involving pole attachments right.

Last month, the Commission unanimously took a number of steps to modernize our pole attachment rules. First, we created a new process to resolve pole attachment disputes fast and effectively. If a company trying to build new broadband service gets into a disagreement with a pole owner, it can bog down deployment. So we set up a new intra-agency rapid response team—the Rapid Broadband Assessment Team—to speed dispute resolution. Second, we increased transparency by expanding access to pole inspection reports. This means pole owners will have to share reports with new attachers deploying broadband so they have information about where poles have been identified for replacement. Those building broadband benefit from having these facts upfront and early. Third, we updated our policies to make clear when an attacher does not have to pay the full cost to replace an existing pole. Again, clarifying this can help with new deployment. Finally, in a new rulemaking we proposed additional reforms to help speed processing applications for big projects, like the kind we expect to see with the funding from the Bipartisan Infrastructure Law.

**The Honorable Robin Kelly**

*1. Chairwoman Rosenworcel, I understand that your forthcoming order on pole attachments and replacements will provide some clarity around a fair allocation of costs for aging poles or poles that are not in compliance with certain rules and regulations. While this clarity is helpful, what is the Commission doing to clarify a fair allocation of costs when a pole must be replaced for other reasons, such as when the pole is too short to accommodate broadband infrastructure, a common occurrence?*

**RESPONSE:** As you suggest, last month the Commission adopted an order and declaratory ruling providing clarity about obligations for both pole attachers and pole owners. It addresses what are known as "red tagged" poles, which are poles that a pole owner has identified as needing replacement. In particular, it clarifies that this term should be understood more broadly to include poles that the utility identifies for replacement for any reason other than the pole's lack of capacity to accommodate a new attachment. In this action, the agency also offered

additional examples where a pole replacement is not "necessitated solely" by a new attachment or modification request when a pole already requires replacement. These examples, which are not exhaustive, are designed to help utilities and attachers better understand situations when, under the agency's cost-causation principles, it would be contrary to the Commission's rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement. If the pole was too short to accommodate the attachment, and the pole was either red-tagged or otherwise in need of replacement for reasons "not necessitated solely" by the new attachment, the pole owner would not be permitted to charge the full cost of the replacement to the new attacher. We will continue to evaluate the record to determine whether additional action is necessary to further define the cost allocations for pole replacements.

*2. If it is not addressed in its forthcoming pole order, will the Commission commit to establish comprehensive cost allocation principles to ensure a fair allocation of costs between pole owner and attacher no later than June 2024?*

**RESPONSE:** Issues raised in the Commission's rulemaking on this subject from 2022 that were not addressed in our recent order and declaratory rulemaking, along with issues raised in the new rulemaking adopted in conjunction with this recent action, remain pending before the agency. We will continue to monitor the state of broadband deployment and the record in the proceeding to determine what additional Commission action may be warranted. The kind of work we expect to see as a result of the historic investment in broadband infrastructure from the Bipartisan Infrastructure Law will take place more smoothly if we get policies involving pole attachments right. While we hope to resolve these outstanding issues expeditiously, developing and assessing the record is important to inform our progress.

*3. Additionally, with respect to defined processing timelines for applications with 3000 poles and more, would it make sense to apply the timelines in place for applications with less than 3000 poles to larger applications as well? Will the Commission commit to establish defined timelines for projects of all sizes (including applications for 3000 poles and above) no later than June of 2024 if it is not addressed in the forthcoming pole order?*

**RESPONSE:** We expect an increasing number of applications for large numbers of poles as funds from the Bipartisan Infrastructure Law start to support deployment. That is why in our action last month on pole attachment policies, we clarified that our existing timelines apply to the first 3000 poles of a large application. On top of this, we proposed additional reforms to help speed processing applications for big projects. Comments on our these new proposals are due February 13, 2024 with reply comments due February 28, 2024.

*4. I would now like to turn to the BEAD program. As I noted during the hearing, it is critically important to be a good steward of government funds and to stretch those dollars as far as possible. I'm pleased you plan to move forward to help close the mobility gap and use the Broadband Data Collection maps to help inform these decisions. The BEAD program, focused on closing the home broadband gap, will serve as a foundation for connecting both fixed and mobile consumers. This funding will help to amplify the 5G Fund by lowering the cost of tower upgrades or providing mobile 5G connectivity at no additional cost. To stretch BEAD dollars as*

*far as possible, do you agree that it is best to leverage this unprecedented amount of funding to then determine where 5G funds should be deployed?*

**RESPONSE**: Thank you for your support of this important initiative to close the digital divide and provide mobile coverage in rural and high-cost areas of the country. For the first time in our history, thanks to our new mapping initiatives, we have comprehensive data regarding the state of wireless service all across the country. We now know, for instance, that over 14 million homes and businesses nationwide—including over 196,000 in Illinois—do not have mobile 5G wireless coverage today. On top of this, the pandemic has changed our thinking about where we live, work, and travel, expanding our expectations for wireless service nationwide.

It is imperative that as we move forward with the 5G Fund we take these facts into account. That is why I believe we need to expand our thinking beyond what was first proposed for the 5G Fund in 2020. To this end, on September 21, 2023, the Commission kicked off a rulemaking to consider new ways to administer this program and ensure that the Commission efficiently and effectively facilitates the deployment of mobile broadband service to those areas where support is most needed. The agency sought comment on how to best incorporate the use of mapping data in the 5G Fund effort, in light of the clear gaps it demonstrates in coverage. We also sought comment on the appropriate metrics to ensure 5G Fund support recipients are meeting their public interest obligations to deploy in the areas in which they won support and whether we should also consider how any such metric might allow us to account for the impact of the BEAD Program and other federal and state broadband infrastructure investments in the deployment of mobile broadband.

The comments in this rulemaking were due on October 23, 2023, and reply comments were due on November 21, 2023. We are closely examining the record. I am hopeful that we can draw upon the data we are collecting and the record in response to our rulemaking to ensure that policies we adopt will maximize limited universal service funds and help deliver the benefits of mobile connections to where we live, work, and travel nationwide.

**The Honorable Larry Bucshon**

*1. In Indiana, there have been over 400,000 Hoosiers that enrolled in and benefited from the ACP. Additionally, I have seen estimates that the ACP can reduce by 25 percent the per household subsidy needed to build broadband infrastructure in rural areas that are often the most expensive to reach for providers. With the funding for this program expected to run out in the spring, this committee and the FCC should be focused on ways to fund this program. But alongside all that, the program has shown some issues. Chairwoman Rosenworcel, the FCC Inspector General has issued a number of alerts of fraud within the ACP involving agents of companies fraudulently enrolling people in the program. What consequences do providers face for fraudulent enrollments, and are there ways to pursue enforcement action against wrongdoers without restricting access to customers that the provider serves that actually qualify for and benefit from the ACP?*

**RESPONSE:** I agree that it is essential to ensure that the ACP receives additional funding. I also share your concerns about the success and integrity of the program. The Commission takes these issues seriously and the record reflects that we have taken swift action to address issues identified by the Inspector General. The agency also investigates allegations of problematic activity on its own, independent of the work of the Inspector General.

When the Commission set up the program, it adopted rules that include tools to assist with addressing problems that may occur in the ACP. The agency is committed to using these tools to address wrongdoers and fixing any problems it finds expeditiously. These tools include auditing and investigatory procedures that may be used both in cooperation with the Inspector General and other law enforcement agencies and independently by the agency staff to impose forfeitures, fines, and otherwise punish providers that have violated ACP rules.

The Commission also has the authority—in cases of certain misconduct—to remove from the ACP providers that have violated the Commission's rules. To remove a provider, the Commission must first initiate a removal proceeding, and give the provider an opportunity to demonstrate why it should not be removed from the ACP. Due process requirements also require the agency to give providers a chance to appeal removal. While a removal proceeding is pending, the rules require the provider to continue providing service to its ACP subscribers. If a provider is removed from the program, the Commission's rules provide a path to avoid disruption of service and give consumers time to transfer to a new provider.

When a provider is subject to a removal proceeding, the Commission has the authority to take the interim steps of removing the provider from the list of ACP providers, prohibiting the provider from enrolling or transferring in new subscribers, and implementing a funding hold. These interim steps allow the agency to take immediate action to protect the public interest.

*2. In the past I cosponsored legislation directing the FCC to study reforms to who pays into the Universal Service Fund and understand that multiple Commissioners here today support USF reforms as well. I recognize that the Commission has asked Congress to recommend how the financial burden on consumers could be reduced as the contributions system for the universal service programs is reformed. But given the recent political decisions that have been issued by the FCC, I am wary of giving the commission very broad discretion and rulemaking authority to do so. Do you have any preferences on the specific methodologies that the FCC would pursue if given such rulemaking authority to assess broadband providers and edge providers? Are there considerations for this committee to be aware of to ensure that USF reform would not increase the financial burden on consumers?*

**RESPONSE**: The Universal Service Fund provides vital support so that households across America can access and stay connected to the communications services they need to participate in modern life. Since Congress last directed the Commission to establish the current contribution framework in 1996, there has been a revolutionary change in how we communicate, with a broadband connection eclipsing the home telephone as the need-to-have service for everyone, everywhere.

In light of this change, I agree with you that any reform to universal service contribution should consider the financial burden faced by consumers front and center.

On August 15, 2022 the Commission adopted a report detailing different options for reform of the universal service fund contribution system. To be clear, some of these reforms likely require legislative action and are not wholly within the authority of the Commission.

As explained in the report, the Commission received a number of proposals for reforming the contributions system by broadening the contribution base beyond telecommunications services, determining contributions based on a company's ability to pay and raising the revenue threshold for providers required to pay into the contributions system.

One approach detailed in the report is to assess edge providers based on streaming services or cloud computing revenue. However, this approach could potentially increase consumer costs for streaming services, and other edge provider services, through the addition of a new universal service line item on monthly bills.

Other parties proposed requiring edge providers to contribute based on their digital advertising revenues. Digital advertising generates billions of dollars of revenue and is expected to continue to be a growth area. The record reflected that this approach may have a minimal or zero cost impact on consumers. For this reason, I am intrigued by this proposition and believe it deserves further study.

Finally, the report also described the data on record regarding reforms that would broaden the contribution base to include assessment on consumer broadband. The record reflected that this approach would increase consumer broadband bills by $5.28–$17.96 per month. I believe this is an unacceptable increase in the financial burden on consumers.

The Commission is continuing to assess the potential impact of these proposed options on consumer bills.

*3. Hundreds of rural broadband providers wrote to the FCC early in 2022 about the need for the Commission to address the unrecovered costs of the middle mile. The Indiana Rural Broadband Association and the 33 companies it represents also wrote to you last year requesting specifically that the FCC examine, "all costs associated with providing broadband services ...." I understand that a number of my colleagues have urged the FCC to examine all costs of data transportation and the costs associated with the use, maintenance, and upgrading of the middle mile portions of broadband networks in rural areas. Chair Rosenworcel, are there any updates on actions that the FCC has taken on this issue since the publication of the Report on the Future of the Universal Service Fund last year?*

**RESPONSE:** I agree with you about the importance of middle mile infrastructure. Investing in middle mile infrastructure is an underappreciated but vitally important part of supporting broadband deployment. It helps improve resiliency by providing network redundancy and alternative routing in disruptions and disaster. It also enhances opportunities for competition in last-mile infrastructure. In addition, middle mile services are also important because they

connect rural broadband networks to global internet access providers. Finally, middle mile infrastructure supports wireless deployment by providing backhaul, which is especially important for new 5G wireless services in light of their higher capacities and increased antenna requirements.

The Commission's existing universal service programs do not directly target support for middle mile costs. However, the FCC's high-cost programs provide support for building out networks to provide consumers access to voice and broadband at rates that are reasonably comparable to those in urban areas. With the exception of the legacy Connect America Fund Broadband Loop Support program, high-cost support recipients may use that support anywhere in their networks to upgrade their ability to offer improved service; they are not limited to using the support only for last mile facilities that traditionally have been supported through legacy mechanisms.

While the Commission's existing programs do not specifically target support for middle mile costs, the Bipartisan Infrastructure Law provided $1 billion to the Department of Commerce for the Enabling Middle Mile Broadband Infrastructure Program to expand middle mile infrastructure and reduce the cost of connecting unserved and underserved areas. Awards were issued for that program in 2023. Some states, including California and Arizona, have also developed their own funding programs to support middle mile infrastructure.

It is important to review the success of these initiatives both at the state and federal level to understand what the future of middle mile support should look like. For its part, going forward, the Commission will need to consider the role of efforts like these and the Broadband, Deployment, Equity and Access Program as it develops policies to support the future of universal service.

*4. Are there any additional details on what the Commission's next steps are on this "unrecovered cost" issue because it is critical to sustaining broadband networks in the rural areas of my state and across the country?*

**RESPONSE:** As noted above, the Commission's existing high cost programs do not directly target support for middle mile costs. However, for the agency's newer high cost programs, providers may use that support anywhere in their networks to upgrade their ability to offer improved service, including middle mile facilities; they are not limited to using the support only for last mile facilities that traditionally have been supported through legacy mechanisms.

On July 24, 2023, the Commission adopted an inquiry seeking public comment on future reforms to the high-cost universal service program with the goal of ensuring that it continues to efficiently promote broadband deployment and sustain networks in an evolving broadband environment. Comments were due on October 23, 2023, and reply comments on November 21, 2023. Commission staff is currently reviewing the record and considering next steps.